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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,719	07/02/2003	Jeffrey Nool	P1381.00 (PERCUS.179A)	3778

28390 7590 07/21/2008  
MEDTRONIC VASCULAR, INC.  
IP LEGAL DEPARTMENT  
3576 UNOCAL PLACE  
SANTA ROSA, CA 95403

EXAMINER
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KOHARSKI, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3763

NOTIFICATION DATE	DELIVERY MODE
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07/21/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.vasciplegal@medtronic.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/612,719	<b>Applicant(s)</b> NOOL ET AL.	
	<b>Examiner</b> CHRISTOPHER D. KOHARSKI	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 0208.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,10 and 43-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,10 and 43-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/28/2008 has been entered.

### ***Response to Amendment***

Examiner acknowledges the reply filed 03/28/2008 in which claims 1, 45, and 51 were amended. Currently claims 1-7, 9-10 and 43-57 are pending for examination in this application.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5, 10, 44-47, 49-51, 53-55 and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Denison (US2004/0049225). Denison discloses an aspiration catheter.

Regarding claims 1, 3, 5, 10, 43-47, 49-51, 53-55 and 57, Denison discloses an aspiration catheter (10, Figure 1) with a therapy device (33, 42), comprising: an elongate catheter (10) body having proximal (near 17) and distal ends (near 33), a radiopaque marker [0021]; an aspiration lumen (12) with an inner diameter from about 0.03 inches to 0.07 inches ([0017]) extending longitudinally through the elongate catheter body between the catheter body proximal end and an aspiration port (13) at the catheter body distal end, the aspiration port (13) being sized for aspirating particles (50) from a blood vessel and being angled (near 26); a guidewire lumen (16) being adapted for slidably receiving a guidewire and extending longitudinally through at least a portion of the elongate catheter body adjacent the aspiration lumen (12), from a proximal port (15) to a distal port (16) opening to the exterior of the elongate catheter body, the guidewire lumen (14) having an inner cross-sectional area that is significantly smaller than the inner cross-sectional area of the aspiration lumen (Figure 3); and wherein the elongate catheter body includes a distal segment (near 26) wherein the aspiration lumen extends distally beyond the distal port (16) of the guidewire lumen (14), the aspiration lumen (12) within the distal segment being configured to convey embolic material proximally from the blood vessel upon exposure to a source of negative pressure ([0017]) (Figures 1-6, [0005-0009]).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, 9, 48 and 56 are rejected under 35 U.S.C 103(a) as being unpatentable over Denison (US2004/0049225) in view of Martin (USPN5,405,341).

Denison meets the claim limitations as described above except for the plurality of side ports and additional lumen. .

However, Martin teaches a catheter with multiple lumens.

Regarding claims 4, 9, 48 and 56, Martin teaches a double lumen catheter assembly with an irrigation (30) and an aspiration lumen (28) with a plurality of side ports (44, 50) (Figures 1-4).

At the time of the invention, it would have been obvious to add the additional side holes and lumen of Martin to the device of Denison in order to provide enhanced aspiration and prevent particle clogs and an additional lumen for irrigation. The references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Martin (cols 1-2).

***Claim Rejections - 35 USC § 103***

Claims 2 and 6-7 are rejected under 35 U.S.C 103(a) as being unpatentable over Denison (US2004/0049225).

Regarding claims 2 and 6-7, Denison discloses the claimed invention except for the claimed guidewire lumen lengths. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the guidewire lumen to include various sizes for different vascular system treatment, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

***Response to Arguments***

Applicant's arguments with respect to claims 1-7, 9-10 and 43-57 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on 5:30am to 2:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date: 7/14/2008  
/Christopher D Koharski/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763